Rethinking a "Knowing, Intelligent, and Voluntary Waiver" in Massachusetts' Juvenile Courts

It was a typical morning in delinquency court. The halls were crowded with boys, girls, and the adults who accompanied them. Harried attorneys searching for their clients pushed through the crowd. Attorney Jones rushed over to her 13-year-old client and announced, "I have a great deal for you. The district attorney is willing to give you a CWOF for 12 months with the following conditions: attend school daily without incident, do 40 hours of community service, and pay any restitution owed. Of course, it's up to you if you want to take the deal. But, as you know, we don't have a good case for trial. Do you want to take the deal?" The boy looked at his mother, who mumbled, "I don't want to come back here again and waste another whole day." The boy nodded yes, and the attorney continued: "I have to explain this form to you—it's a plea form. In order to take the deal, you have to waive your rights. You're giving up your right to a trial, understand?" The boy nodded yes. "The judge will ask questions to make sure you understand what you're doing—that you're waiving your rights. He'll ask you if you have had any drugs or alcohol that interfere with your ability to understand what you're doing today. He'll also ask you if anyone coerced or threatened you to waive your rights. Just answer the questions, 'Yes, Your Honor. No, Your Honor.' Okay, you have to sign this form, which states that you understand the rights you are waiving. Your mother also has to sign. Oh, they're calling your name; we have to go into court. Just sign quickly—and, remember, you're agreeing to waive your rights."

As they walked into court, the boy sheepishly waved to the judge. Attorney Jones hissed, "What are you doing?" The boy replied, "I'm waving my right."

This example highlights what judges, defense attorneys, and prosecutors already know: that children in juvenile courts are waiving their rights, accepting dispositions, and participating in colloquies they do not understand. Justice requires that children, and the parents or interested adults who theoretically guide them, make reasoned and informed decisions. With courts and legislators increasingly emphasizing accountability and punishment in the juvenile justice system, the stakes for children have never been higher. Ensuring that children understand the implications of the rights they are waiving and the dispositions they are accepting is essential to safeguarding the fundamental fairness of the juvenile court proceeding.

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Justice requires that children make reasoned and informed decisions when waiving their constitutional rights during the tendering of a plea. Yet each day in juvenile courts throughout this country children are waiving their rights, accepting dispositions, and participating in colloquies they do not understand.

This article examines children's understanding of legal terminology commonly used in Massachusetts' juvenile court proceedings, particularly during the tendering of a plea.

The authors conducted an empirical study of court-involved children's understanding of legal terminology. The results of this study indicate that colloquies and waiver forms routinely used in Massachusetts' juvenile court proceedings are replete with words and phrases that court-involved

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children do not understand. On average, participants in the study did not understand 86 percent of the legal terminology routinely used in plea proceedings in Massachusetts' juvenile courts. Although prior instruction and court experience improved performance, the average rate of correct responses only increased from 2 to 5 out of 36 possible words and phrases. This dismal performance raises serious concerns about the validity of children's juvenile court waivers.

Based on the results of the study, the authors offer suggestions for attorneys and judges who practice in the juvenile justice system. The article concludes with a sample "child-friendly" colloquy intended to enhance children's understanding of plea proceedings and give judges the information they need to certify, with confidence, that a child's plea is knowingly, intelligently, and voluntarily made.

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This article examines children's understanding of legal terminology commonly used in Massachusetts' juvenile court proceedings, particularly the terminology used during the tendering of a plea. The first section of the article describes the origin and evolution of juvenile court proceedings and examines the due process requirements for a defendant in Massachusetts, whether adult or child, to waive his or her constitutional rights when tendering a plea. The second section presents the results of a pilot study designed to assess whether children understand the words and phrases commonly used in Massachusetts' juvenile court proceedings and whether experience and instruction improve comprehension. The final section discusses the implications of the research results and suggests modifications for juvenile court procedures and practices.

PLEA PROCEEDINGS IN THE JUVENILE COURT

In 1899, Illinois' Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children established the first juvenile court in the United States.[1] The court was conceived as a nonadversarial forum in which concerned adults would craft dispositions in the best interest of the child. By the end of World War II, all 48 states had juvenile courts based on the "best-interest" model.[2] This beneficent concept of juvenile court proceedings was premised on the belief that children were less mature, capable, and culpable than adults; it envisioned "a fatherly judge [who] touched the heart and conscience of the erring youth by talking over his problems [and] by [providing] paternal advice and admonition . . . ."[3] The emphasis was on treatment and rehabilitation rather than punishment; the court theoretically balanced the best interest of the child with that of the state, typically to the detriment of the child's due process rights.[4]

In 1967, the United States Supreme Court noted that this "gentle conception" lacked validity when it addressed the appeal of 15-year-old Gerald Gault's sentence of six years' incarceration on a misdemeanor charge, for which an adult would merely have suffered a fine.[5] The Court recognized that, under the guise of a benevolent juvenile court, children were suffering a deprivation of liberty without due process of law.[6] Relying on the Fifth, Sixth, and Fourteenth Amendments of the U.S. Constitution, the Court affirmed children's right to counsel, their right to confront and cross-examine their accusers, and their privilege against self-incrimination.[7] In 1969, the Court established that allegations of delinquency had to be proved beyond a reasonable doubt.[8] Although the Court stopped short of granting juveniles the right to a jury trial in delinquency proceedings,[9] it held that due process and fundamental fairness required the extension of rights and protections enjoyed by adult defendants to juveniles facing delinquency proceedings.[10] When contrasting the *parens patriae*[11] philosophy with due process, the Court observed that "the actuality of fairness, impartiality and orderliness—in

short the essentials of due process—may be a more impressive and more therapeutic attitude as far as the juvenile is concerned."[12]

MASSACHUSETTS' JUVENILE COURTS

In Massachusetts, children are afforded the full panoply of due process rights and protections enjoyed by adults. Children have the right to a jury trial, and the Massachusetts Rules of Criminal Procedure apply to juvenile court proceedings.[13] A "child" subject to prosecution in the Massachusetts juvenile courts is defined as an individual between the ages of 7 and 17.[14] In 2003, over 32,000 delinquency complaints were filed against more than 13,000 Massachusetts children.[15] However, 99 percent of their cases were resolved prior to trial by the child's tendering of a plea.[16]

A child's offer of an admission or guilty plea is a significant step in the Massachusetts juvenile justice process. It represents a decision by the child to forgo a trial and to acknowledge that the violations of law charged against him or her are true. Judges and attorneys recognize that children are often confused and anxious when they come to court. They also recognize that a large number of court-involved children suffer from academic failure, learning disabilities, and mental illness. Yet judges and attorneys routinely certify that children have ostensibly made an informed decision to waive their constitutional rights because they have signed a plea form and provided seemingly appropriate responses during the plea colloquy.

Due process requires that the child defendant make a "knowing, intelligent, and voluntary" waiver of his or her constitutional rights with knowledge of the charge and the possible consequences of the plea.[17] The judge must affirm for the record, by means of an adequate colloquy, that the child participated in and understood the nature and ramifications of the decisions he or she made.[18] The colloquy—a conversational exchange between the judge and the defendant—should not be, but often is, a mechanical performance in which the judge and the child merely recite formulaic words. In a procedurally sound colloquy, the judge should ensure that the child actually comprehends the process in which he or she is participating.[19] An inadequate colloquy violates constitutional due process requirements and should result in a vacated plea.[20]

A plea is made "knowingly" and "intelligently" when a child understands the elements of the charges against him and the procedural protections he is forgoing by tendering a plea.[21] At a minimum, the judge must inform the child that he is waiving the constitutional right to trial, the right to confront his accusers, and the privilege against self-incrimination.[22] In addition, the judge or the defense attorney must explain the elements of the charged crime, or the child must admit to the facts constituting the crime.[23]

A "voluntary" waiver requires that the child tender the plea free from coercion, inducements, or threats.[24] The judge must be satisfied that the child was neither forced to offer a plea nor under the influence of substances that could impair his judgment or affect his ability to participate in the proceedings.[25] The judge should also inquire of the child or the attorney whether the child suffers from any mental illness that might impair his ability to participate in the proceeding.[26] The law prescribes no particular recitation, but it cautions judges to conduct a "real probe of the defendant's mind."[27]

PREPARING THE CHILD FOR THE PLEA PROCEEDING

The attorney for a child must ensure that the client, despite his or her tender years, fully understands the nature and ramifications of the juvenile court proceedings. The attorney must assume the role of educator as well as advisor when preparing the child for the proceedings and decisions in which the child must participate.

Ideally, a defense attorney meets with the young client in the privacy of the attorney's office to review the facts of the case and to inform the child and his or her family about the nature of juvenile court proceedings. At a minimum, these discussions should include an explanation of the elements of the charged crime; an assessment of the strengths and weaknesses of both the child's and the prosecutor's cases; an explanation

of what happens during a trial, including the roles of participants and the burden of proof; a description of the difference between a jury trial and a "bench" trial; an explanation of possible outcomes ranging from "dismissed" or "not guilty" to commitment to the state juvenile correctional agency; an explanation of waiver forms that must be signed if the child decides to tender a plea and of the colloquy that the court must elicit before accepting a plea; and a description of what probation entails and the possible ramifications of probation violations. In practice, such comprehensive discussions rarely occur.

Typically, overburdened defense attorneys and prosecutors negotiate a plea bargain on the day of a required court appearance. The defense attorney then finds the child in the crowded hallways of the juvenile court and quickly "explains" the "deal" and the plea process to the child and parent. If the child decides to accept the "deal," both the parent and child sign a waiver of the right to trial and a tender-of-plea form that outlines the terms and conditions of the disposition. The defense attorney briefly describes the colloquy the judge must conduct to affirm for the record that the child is making a "knowing, intelligent, and voluntary" waiver of his or her constitutional rights before accepting the plea.

THE PLEA PROCEEDING

A busy Massachusetts juvenile court may have over 100 cases scheduled on a "delinquency" day.[28] Thus, there is intense pressure on all court personnel, including judges and attorneys, to process cases quickly and efficiently. A plea proceeding requires more time than most pretrial hearings because it involves a sequence of events: a reading of the charge, a recitation of the underlying facts surrounding the charge, a plea colloquy conducted by the judge, and oral presentations by the attorneys in support of their recommended dispositions. If all goes smoothly, the proceeding lasts approximately 5 minutes; if there is disagreement over the dispositional terms, the proceeding may last 10 or more.

Typically, the colloquy takes less than 2 minutes. Although there are exceptions, judges generally use language that mimics the legal words and phrases found in the waiver form. When a child provides a "wrong" answer or is so confused that he or she is unable to respond, judges many times attempt to clarify their statements by repeating the question more slowly or loudly. If that does not work, some judges struggle to find alternative wording for the concepts they are trying to communicate (e.g., using "proof to a moral certainty" as a substitute for "beyond a reasonable doubt"). Others send the child out of the courtroom, admonishing the attorney to "explain things to your client."

Currently, the tender-of-plea form used in Massachusetts' juvenile courts mirrors the form used in district court for adults. It is a standard-size sheet of paper with single-spaced text printed on both sides. The juvenile court version substitutes the word *child* for *defendant* and *adjudication* for *guilty,* but there are no differences in the language used to describe the waiver of constitutional and statutory rights. The front page of the form contains identifying information, such as the child's name and court docket number. Section I of the form contains the child's tender of plea, including an admission to the charged offenses and proposed dispositional terms. If the prosecutor disagrees with the terms, he or she enters recommendations in the space provided. In Section II, the court indicates acceptance of the child's tender of plea or, in Section III, the court may reject the child's dispositional terms and write in terms the court finds acceptable. The child's attorney, the prosecutor, and the judge must sign the front page of the form.

The reverse side of the Massachusetts form consists of sections containing the child's waiver of rights, the defense attorney's certification that the waiver of rights was explained to the child, and the judge's certification that the child was addressed in open court and made a knowing, intelligent, and voluntary waiver of his or her constitutional and statutory rights. The child and parent or guardian must sign and date the form under the section labeled "Child's Waiver of Rights." This section consists of the following:

SECTION IV CHILD'S WAIVER OF RIGHTS (G.L.C. 119, S. 55A) & ALIEN RIGHTS NOTICE (G.L.C 278, S. 29D)

I, the undersigned child, understand and acknowledge that I am voluntarily giving up the right to be tried by a jury or a judge without a jury on these charges.

I have discussed my constitutional and other rights with my attorney and my parents or guardian. I understand that the jury would consist of six or twelve jurors chosen at random from the community, and that I could participate in selecting those jurors, who would determine unanimously whether or not I was delinquent/a youthful offender *(circle one)*. I understand that by entering my plea of delinquency/youthful offender *(circle one)* or admission, I will also be giving up my right to confront, cross-examine, and compel the attendance of witnesses; to present evidence in my defense; to remain silent and refuse to testify or provide evidence against myself by asserting my constitutional right against self-incrimination, all with the assistance of my defense attorney; and to be presumed innocent until adjudicated delinquent/youthful offender *(circle one)* by the prosecutor beyond a reasonable doubt.

I am aware of the nature and the elements of the charge or charges to which I am entering my guilty plea or admission. I am also aware of the nature and range of the possible commitment, sentence or sentences.

My plea of delinquency/youthful offender *(circle one)* or admission is not the result of force or threats. It is not the result of assurances or promises, other than any agreed-upon recommendation by the prosecution, as set forth in Section I of this form. I have decided to plead delinquent/youthful offender *(circle one)* or to admit to sufficient facts, voluntarily and freely.

I am not now under the influence of any drug, medication, liquor or other substance nor am I aware of any other factor that would impair my ability to fully understand the constitutional and statutory rights that I am waiving when I plead delinquent/youthful offender *(circle one)*.

I understand that if I am not a citizen of the United States, an adjudication of delinquency/youthful offender or admission to sufficient facts for this offense may have the consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States.

This form purports to inform the child of the constitutional rights being waived and to affirm that the child is doing so knowingly and voluntarily. However, the written waiver cannot substitute for the oral colloquy.[29] A signature on a form is just one of several factors that "bespeak the defendant's intention to consummate the plea bargain."[30] Ultimately, the advisements must be made "on the record, in open court."[31]

A STUDY OF CHILDREN'S UNDERSTANDING OF THE PLEA PROCEEDING

A growing body of research literature suggests that children differ from adults in their legal decision making because they fail to appreciate the consequences of the decisions they are required to make. Little attention has been paid to another problem that may influence children's legal decision making: the terminology adults use when addressing children about court proceedings and the decisions they are required to make. This pilot study gathered empirical data on the understanding of legal terminology by court-involved children, particularly when tendering a plea.

PROCEDURE

To assess children's understanding of legal terminology, Kaban developed a questionnaire listing 36 words and phrases selected from the Massachusetts tender-of-plea form and colloquies observed in juvenile court proceedings (see Table 1). The questionnaire was administered to 98 children who agreed to participate in the study.

Interviewers orally presented each participant with the words and phrases and asked each to choose one of the following responses: "I don't know that

word/phrase at all," "I have seen or heard that word/phrase but don't know its meaning," or "I think I know the meaning and it is . . . ." If the child chose the last option, he or she was instructed to define the word or phrase only as it related to court proceedings.

Table 1. Words and Phrases in Study Questionnaire

Word	Definition	Difficulty Level
Assurance	Being certain	8
Commitment	Confinement	12
Compel	To force	10
Comply	Obey	16
Convict	Find guilty	6
Counsel	Lawyer	12
Cross-examination	To question carefully	6
Default	Failure to act	10
Deportation	Removing from country	8
Disposition	Arrangement	12
Exceed	Go beyond	8
Exclusion	Shutting out	10
Hearing	Court session	6
Impair	Damage	13
Naturalization	Becoming a citizen	12
Plea*	n/a	8
Pursuant	In accordance	12
Recipient	One who gets	10
Restitution	Payment for loss	12
Right	Legal claim	8
Sentence	Court punishment/jail term	4
Statutory	By law	13
Sufficient	Enough	8
Tender	To offer	13
Trial	A court process	4
Waiver	Release of a right	16

Phrases
Admit to sufficient facts
Bail warning
Beyond a reasonable doubt
Burden of proof
Joint recommendation
Jury trial
Presumption of innocence
Proof to a moral certainty
Surety surrender
Tender of plea

* *The Living Word Vocabulary* defines *plea* as "appeal." Kaban scored responses correct if the child described a "deal" or a "bargain" made between defendant and prosecution that resolved the case.

To assess the accuracy of the children's responses, Kaban compared their answers to definitions provided in *The Living Word Vocabulary.*[32] This compendium of 44,000 words is the product of a nationwide study of 320,000 children in grades 4, 6, 8, 10, 12, and freshman and senior years of college. Each word is followed by one or more brief definitions coupled with an assessment of the definition's difficulty level. The difficulty level is a determination of the school grade at which a majority of children accurately defined that word. For example, *restitution,* defined as "payment for loss," is a word defined correctly by a majority of 12th graders. In contrast, *sentence,* defined as "court punishment" or "jail term," is a word defined correctly by a majority of 4th graders.

Assessing the difficulty level of the phrases proved more difficult. For example, the phrase "beyond a reasonable doubt" contains three words that are at a 6th-grade difficulty level: *beyond, reasonable,* and *doubt.* Similarly, "burden of proof" contains words at 6th- and 4th-grade difficulty levels, respectively. Yet both phrases refer to abstract concepts that many adults serving on juries struggle to define. Although we did not assign a specific difficulty level to each phrase, interviewers asked participants in the study to place the phrases on the same continuum and, if they thought they knew the meaning, to define the phrase.

THE "UNINSTRUCTED" GROUP

On randomly selected mornings in September 2001, a trained interviewer[33] approached children waiting in the hallway of a Massachusetts juvenile court. The interviewer asked them to volunteer for a study to determine children's understanding of court proceedings. Out of 73 children approached, 69 agreed to participate (the "uninstructed" group). The interviewer, a former elementary school teacher who was attending law school, told each child to define the words and phrases only as they related to court proceedings. The interviewer provided no further information other than this instruction. The interviewer read the list of words and phrases out loud, one at a time, and recorded each participant's oral responses.

The 69 participants were court-involved boys and girls who previously had been arraigned but whose cases had not yet been adjudicated. No information regarding their prior experience with plea proceedings was obtained. Participants ranged in age from 9 to 17, with 74 percent of the group between ages 14 and 16. The mean age was 14.9 years. Sixty-one participants (88 percent) were male, and eight (12 percent) were female. Participants reported they were in grades 3 through 10; 59 percent were in grades 8 through 10. The mean school grade was 8.3. Sixteen percent of the group were African American, 17 percent Asian, 41 percent Caucasian, and 25 percent Hispanic. (See Table 2.)

THE "INSTRUCTED" GROUP

To more closely replicate the instructions that children should receive from their attorneys before participating in a plea colloquy, the study also included a group who received similar instructions before answering the questionnaire.

In winter 2002, Kaban visited a Massachusetts juvenile detention facility for boys detained on serious felony charges. Facility staff introduced her as an attorney who was there to explain court proceedings to them. Kaban instructed the boys as a group regarding court proceedings from arraignment to disposition; the difference between a bench trial and a jury trial; the meaning of "pleading out"; and the legal rights that are waived when a defendant tenders a plea. Kaban also explained that a judge must conduct a colloquy before accepting a plea. Throughout the two one-hour sessions, she encouraged the boys to ask questions. At the end of each session, Kaban explained that she was conducting a study of children's understanding of court proceedings and asked for volunteers. Out of the 50 boys present during the instructional sessions, 29 agreed to participate (the "instructed" group).[34]

Like the uninstructed group, these participants were told to define the words and phrases only as they related to court proceedings. The interviewers individually administered the questionnaire to each participant, reading the words and phrases out loud, one at a time, and recording each participant's oral responses. Unlike the uninstructed group, who were interviewed in the hallways of the juvenile court, these participants were able to sit down at a table in a quiet corner of the detention facility while completing their questionnaires. In addition, the interviewers asked these participants more detailed questions

Table 2. Demographic Characteristics of Study Groups (*N* = 98)

	Uninstructed Group (*n* = 69)		Instructed Group (*n* = 29)	
	n	%	*n*	%
Gender				
Boys	61	88.4	29	100
Girls	8	11.6	0	0
Race				
Caucasian	28	40.6	9	31
Hispanic	17	24.6	6	20.7
Asian	12	17.4	1	3.4
African American	11	15.9	13	44.8
Grade in school				
3	1	1.4	0	0
6	2	2.9	1	3.4
7	6	8.7	2	6.9
8	11	15.9	8	27.6
9	17	24.6	9	31.6
10	13	18.8	8	27.6
11	7	10.1	1	3.4
12	5	7.2	0	0
Not in school	6	8.7	0	0
Missing	1	1.4	0	0
Mean grade in school	8.3, *sd* = 3.06		8.8, *sd* = 1.14	
Age				
9	1	1.4	0	0
11	1	1.4	0	0
12	2	2.9	0	0
13	7	10.1	0	0
14	15	21.7	3	10.3
15	11	15.9	10	34.5
16	25	36.2	13	44.8
17	7	10.1	3	10.3
Mean age	14.9, *sd* = 1.56		15.5, *sd* = .83	

about their prior court experiences. All 29 reported past experience in tendering pleas.

Participants in the instructed group ranged in age from 14 to 17, with 79 percent of the group between ages 15 and 16. Their mean age was 15.5 years, and all 29 participants were male.[35] Group members reported that they were in grades 6 through 11; 87 percent were in grades 8 through 10. The mean school grade was 8.8. Forty-five percent were African American, 3 percent Asian, 31 percent Caucasian, and 21 percent Hispanic. (See Table 2.)

Participants in neither group were asked whether they had ever repeated a grade in school or received special education services. An informal survey of the children's ages and reported grades in school suggested that at least 25 percent of each group experienced educational difficulties.

SCORING

All participants in both the uninstructed and the instructed groups received the same questionnaire. To ensure consistent interpretation of the participants' definitions, Kaban scored all responses. If the child reported not knowing the word or phrase at all, he or she received a score of zero; a score of one was given if the child reported having heard or seen the word or phrase before but did not give a definition; and a score of two was given if the child provided a definition. We summed the resulting scores to construct aggregates of the total number of definitions that the children provided, regardless of their accuracy, as well as the total number of *correct* definitions provided.

STUDY FINDINGS

Most participants in this study did not understand the majority of words and phrases presented to them. (See Tables 3 and 4.) On average, members of the uninstructed group provided 10 out of 36 possible definitions. However, they defined an average of only 2 terms correctly—that is, they understood only 5.5 percent of the commonly used legal terms. On average, members of the instructed group provided 18 definitions but averaged only 5 correct definitions, a mere 14 percent of the commonly used legal terms. A sample of study participants' responses (see Table 5) illustrates the level of misconception and confusion children experience when confronted with commonly used legal terminology.

None of the children in the uninstructed group accurately defined any of the following words or phrases:

burden of proof
disposition
joint recommendation
naturalization
presumption of innocence
proof to a moral certainty
pursuant
tender
statutory
tender of plea
waiver

Likewise, none of the children in the instructed group correctly defined any of the following words or phrases:

assurance
disposition
presumption of innocence
proof to a moral certainty
pursuant
statutory
surety surrender
tender
tender of plea

This result is not surprising, given that the difficulty of a majority of the terms was at the 10th-grade level or higher, while the average participant was at the 8th-grade level. (See Tables 1 and 2.) For all participants, the most commonly understood words were *sentence* (4th-grade difficulty level) and *deportation* (8th-grade difficulty level). Thirty-eight percent of the uninstructed group and 69 percent of the instructed group gave correct definitions for *sentence,* while 23 percent of the uninstructed group and 48 percent of the instructed group provided correct definitions for the word *deportation.*

The phrases proved most challenging for all participants in the study. Although children in both groups attempted to define the phrases, their answers were overwhelmingly incorrect. For example, "jury trial" was the phrase most frequently defined in both groups; 51 percent of the uninstructed group and 93 percent of the instructed group reported that

Table 3. Responses to Court-Terminology Survey and Accuracy of Definitions: Uninstructed Group (*n* = 69)

	Did Not Provide a Definition		Provided a Definition		Definition Was Correct	
	n	%	*n*	%	*n*	%
Words						
Assurance	57	83	12	17	3	4
Commitment	31	45	38	55	1	1
Compel	68	99	1	1	1	1
Comply	52	75	17	25	11	16
Convict	24	35	45	65	12	17
Counsel	48	70	21	30	5	7
Cross-examination	49	71	20	29	8	12
Default	44	64	25	36	9	13
Deportation	39	56	30	44	16	23
Disposition	56	81	13	19	0	0
Exceed	62	90	7	10	4	6
Exclusion	57	83	12	17	2	3
Hearing	28	41	41	59	4	6
Impair	58	84	11	16	2	3
Naturalization	59	86	10	14	0	0
Plea	33	48	36	52	4	6
Pursuant	62	90	7	10	0	0
Recipient	61	88	8	12	3	4
Restitution	59	86	10	14	3	4
Right	29	42	40	58	7	10
Sentence	19	28	50	72	26	38
Statutory	53	77	16	23	0	0
Sufficient	54	78	15	22	3	4
Tender	59	86	10	14	0	0
Trial	21	30	48	70	6	9
Waiver	58	84	11	16	0	0
Phrases						
Admit to sufficient facts	46	67	23	33	2	3
Bail warning	42	61	27	39	1	1
Beyond a reasonable doubt	51	74	18	26	1	1
Burden of proof	60	87	9	13	0	0
Joint recommendation	59	86	10	14	0	0
Jury trial	34	49	35	51	10	14
Presumption of innocence	52	75	17	25	0	0
Proof to a moral certainty	65	94	4	6	0	0
Surety surrender	60	87	9	13	1	1
Tender of plea	66	96	3	4	0	0

Table 4. Responses to Court-Terminology Survey and Accuracy of Definitions: Instructed Group (*n* = 29)

	Did Not Provide a Definition		Provided a Definition		Definition Was Correct	
	n	%	*n*	%	*n*	%
Words						
Assurance	13	45	16	55	0	0
Commitment	4	14	25	86	3	10
Compel	25	86	4	14	1	3
Comply	18	62	11	38	7	24
Convict	6	21	23	79	12	41
Counsel	13	45	16	55	2	7
Cross-examination	14	48	15	52	2	7
Default	5	17	24	83	10	34
Deportation	10	34	19	66	14	48
Disposition	15	52	14	48	0	0
Exceed	19	66	10	34	5	17
Exclusion	18	62	11	38	3	10
Hearing	6	21	23	79	7	24
Impair	22	76	7	24	4	14
Naturalization	24	83	5	17	3	10
Plea	2	7	27	93	3	10
Pursuant	20	69	9	31	0	0
Recipient	18	62	11	38	5	17
Restitution	21	72	8	28	4	14
Right	3	10	26	90	2	7
Sentence	1	3	28	97	20	69
Statutory	12	41	17	59	0	0
Sufficient	13	45	16	55	9	31
Tender	23	79	6	21	0	0
Trial	0		29	100	1	3
Waiver	15	52	14	48	3	10
Phrases						
Admit to sufficient facts	14	48	14	48	7	24
Bail warning	13	45	16	55	3	10
Beyond a reasonable doubt	16	55	13	45	6	21
Burden of proof	21	72	8	28	1	3
Joint recommendation	22	76	6	21	2	7
Jury trial	2	7	27	93	10	34
Presumption of innocence	19	66	10	34	0	0
Proof to a moral certainty	26	90	3	10	0	0
Surety surrender	25	86	4	14	0	0
Tender of plea	28	96	1	4	0	0

they knew the meaning of the phrase. Yet only 14 percent of the uninstructed group and 34 percent of the instructed group defined the phrase correctly. As shown by their responses, such as "come to court on date" (age 13) and "go in front of the judge" (age 16), children in the uninstructed group failed to appreciate the difference between a jury trial and pretrial court appearance. Although the instructed group received detailed information about jury trials just prior to the administration of the questionnaire, including that jury decisions must be unanimous and that the burden of proof is beyond a reasonable doubt, most did not retain this information. A typical definition of "jury trial" was "people from the neighborhood come and tell whether you're guilty or not" (age 15).

DIFFERENCES IN UNDERSTANDING RELATIVE TO AGE, INSTRUCTIONAL STATUS, AND ETHNICITY

We analyzed the data to determine whether participants' understanding of legal terminology was related to age (16 and older versus 15 and younger), ethnicity (Caucasian, Asian, Hispanic, African American), or instructional status (uninstructed versus instructed). We did not examine gender differences because there were too few girls in the sample.

First, the study focused on age. We hypothesized that older children would exhibit greater understanding of legal terminology than younger children because of their higher educational attainment and longer life experience. Ethnicity was of interest because of recent attention to the overrepresentation of minority children in the juvenile justice system.[36] We hypothesized that if minority children were less likely than nonminority children to understand the legal terminology used in juvenile court proceedings, that might adversely affect the decisions they made about their cases and lead to a higher rate of incarceration. Instructional status provided an opportunity to test the assumption that if court-involved children receive instruction from an attorney prior to the plea proceeding, they understand the rights they are waiving and the ramifications of the decisions they are making.

Table 5. Sample Definitions Provided by Study Participants

Admit to sufficient facts	"Admit to something you didn't do" (age 14)
Beyond a reasonable doubt	"Gut feeling" (age 16) "When someone is acting suspicious" (age 13) "Don't hardly believe yourself" (age 16)
Counsel	"Person who sits in front of the computer" (age 14) "D.A." (age 16) "Probation type" (age 16) "People who listen to you in court" (age 18)
Cross-examination	"Taking a drug test" (age 16) "Attorney will talk to you about it" (age 14)
Default	"What it used to be and you change it" (age 15) "A mistake" (age 16)
Disposition	"Positioned in wrong place" (age 13) "Not in proper position" (age 16) "Bad position" (age 16)
Joint recommendation	"You are in trouble with two cases" (age 14) "Both mother and father spend time with their children a half year each" (age 14)
Plea	"When you want to get it over with so you plead guilty" (age 15) "Like police" (age 15)
Presumption of innocence	"If your attorney feels you didn't do it" (age 15)
Pursuant	"When lawyer is really into the case" (age 16)
Restitution	"Time spent somewhere" (age 18)
Right	"To the right direction" (age 14) "Right about something" (age 14)
Trial	"Go in front of the judge" (offered by four subjects ranging from ages 14 to 16)

Univariate analyses of variance revealed no significant interactions between ethnicity and instructional status; ethnicity and age; instructional status and age; or ethnicity, instructional status, and age. (See Table 6.) Therefore, these variables did not confound the analyses of the interaction between the independent variables (age, ethnicity, and instructional status) and the dependent variables (what participants thought they knew and what they actually knew).

What Children Thought They Knew

First, we assessed what participants *thought* they knew. This was a measure of the total number of definitions provided by participants regardless of accuracy. We analyzed the total number of definitions provided for all the words and phrases with respect to participant age, ethnicity, and instructional status to determine whether differences within and between groups, if any, were statistically significant. Our assessments relied on the analysis of variance, a statistical technique that looks for relationships among variables by analyzing sample means. Following convention, we regarded relationships as meaningful, or statistically significant, if their p values were less than or equal to .05—that is, there was a probability of only 5 percent or less that the covariation was due to chance.

Within the uninstructed group (n = 69), age did not affect the total number of definitions provided by participants. However, among the instructed group (n = 29), older children provided significantly more definitions than did younger children (F = 7.24, p = .012). Overall, the instructed group provided significantly more definitions than the uninstructed group (F = 16.08, p = .000). The relationship between the total number of definitions provided and ethnicity was also statistically significant (F = 2.65, p = .054), with the significant differences occurring between Caucasians and Hispanics (mean difference = 6.22, se = 1.99, p = .013) and Caucasians and Asians (mean difference = 7.57, se = 2.52, p = .013).[37] In both instances, Caucasians provided more definitions than the other ethnic groups.

What Children Actually Knew

Next, we assessed what participants *actually* knew. This was a measure of the number of correct definitions provided by the participants for all the words and phrases. We analyzed this number with respect to participant age, ethnicity, and instructional status to determine whether differences within and between groups, if any, were statistically significant.

The number of correct definitions was significantly different between age groups (F = 6.38, p = .014), instructional status (F = 14.85, p = .000), and ethnicities (F = 3.61, p = .017). Within both groups, older children provided significantly more correct

Table 6. Participants' Total and Correct Responses by Age, Ethnicity, and Instructional Status

	Uninstructed Group (n = 69)				Instructed Group (n = 29)			
	n	Average No. of Answers Provided	Average No. of Correct Answers	Standard Deviation	n	Average No. of Answers Provided	Average No. of Correct Answers	Standard Deviation
Ethnicity								
African American	11	9.8	1.9	1.57	13	17.6	4.0	3.67
Caucasian	28	13.8	3.6	2.36	9	21.2	7.3	4.71
Hispanic	17	7.6	1.0	1.36	6	14.3	4.2	5.91
Asian	12	7.2	1.6	3.17	1	18.0	6.0	–
Age								
15 and younger	37	9.4	1.8	2.28	13	14.4	3.5	3.67
16 and older	32	11.2	3.1	2.58	16	21.1	6.5	4.86

definitions than younger children. Members of the instructed group provided significantly more correct definitions than members of the uninstructed group. Within the uninstructed group, significant differences existed between Caucasians and Hispanics, with Caucasians providing significantly more correct definitions than Hispanics. Within the instructed group there were no significant differences between ethnic groups in the number of correct definitions provided.

INFLUENCE OF WORD DIFFICULTY LEVEL ON THE RATE OF CORRECT RESPONSES

Finally, we separated the 26 words into subsets by level of difficulty. Fourth- and 6th-grade words were classified as the "easy" words (n = 5); 8th- and 10th-grade words, the "moderate" words (n = 10); and 12th-grade and post–high school words, the "difficult" words (n = 11). To assess whether the results differed depending on the difficulty level of the words, we analyzed the number of correct responses within each subset in conjunction with age, ethnicity, and instructional status.

Easy Words

Participants' understanding of the easy words differed widely among age groups (F = 4.60, p = .035), ethnicities (F = 4.50, p = .006), and instructional status (F = 5.94, p = .017). Within the entire sample (N = 98), older children provided more correct definitions for the easy words than did the younger children. With regard to ethnicity, the significant differences were between Caucasians and Asians (mean difference = .95, se = .31, p = .014) and Caucasians and Hispanics (mean difference = .97, se = .25, p = .001). In both instances, Caucasians gave more correct definitions for the easy words than did Asians or Hispanics. Overall, the instructed group provided more correct definitions for the easy words than the uninstructed group (F = 5.94, p = .017).

Moderate Words

The participants' understanding of the moderate words was significantly different among age groups (F = 7.02, p = .01), ethnicities (F = 4.34, p = .007), and instructional status (F = 17.89, p = .000). Within the entire sample, older participants provided more correct definitions for the moderate words than did the younger participants. Similarly, the instructed group provided more correct definitions for the moderate words than did the uninstructed group. The largest differences relating to ethnicity existed between Caucasians and African Americans (mean difference = .95, se = .34, p = .031). The difference between Caucasians and Hispanics approached statistical significance (mean difference = .84, se = .34, p = .078). In both instances, Caucasians gave more correct definitions than did African Americans and Hispanics.

Difficult Words

There were no significant differences in older and younger participants' understanding of the difficult words. However, participants' understanding of the difficult words significantly differed among ethnicities (F = 3.98, p = .011) and instructional status (F = 9.58, p = .003). The significant differences existed between Caucasians and Asians (mean difference = .71, se = .27, p = .049) and Caucasians and Hispanics (mean difference = .60, se = .22, p = .04). In both instances Caucasians performed significantly better than either Asians or Hispanics. Overall, the instructed group provided more correct definitions for the difficult words than the uninstructed group.

In summary, members of the instructed group and Caucasians in both groups provided significantly more correct responses in all difficulty categories. Older participants provided significantly more correct responses than younger participants for the easy and moderate words. However, the age difference in performance disappeared with the difficult words; they were too hard for even the older participants.

DISCUSSION

The results of this study indicate that colloquies and waiver forms routinely used in Massachusetts' juvenile courts are replete with words and phrases that court-involved children do not understand. Even

educated participants with prior experience in the court system failed to correctly define 86 percent of the words and phrases presented. However, their inability to provide an accurate definition for a legal term is not the only cause for concern. The data indicate that even when children think they know the meaning of a word, they often mistake it for a similar-sounding word, apply nonlegal definitions, or rely on some portion of the word to trigger associations to a possible, and often incorrect, meaning. These results raise serious concerns about the validity of children's waivers accompanying the tendering of a plea.

Prior to analyzing the data, we hypothesized that older participants would exhibit greater understanding of legal terminology than younger participants because of their more advanced educational status and life experiences. The data for the easy and moderate words supported this hypothesis. The problem, however, is that more than 40 percent of the words routinely used in juvenile court proceedings are the difficult words (12th-grade level or higher); regardless of age, this subset of words exceeded the grasp of all participants. If we consider words with a difficulty level at or higher than 10th grade, almost 60 percent of the words routinely used in juvenile court proceedings exceed the average 8th-grade educational status of study participants. This discrepancy highlights the need to modify the language used in court and on forms to more closely match the educational status and cognitive abilities of court-involved children.

The study also looked at whether minority children are more disadvantaged in the juvenile justice system than Caucasian children in their understanding of words and phrases used in court proceedings. The representation of minority children in the instructed group was noticeably greater than in the uninstructed group. (See Table 2.) This pattern is consistent with statewide data indicating that minority children in Massachusetts are more likely than nonminority children to be detained while their cases are pending.[38] In the uninstructed group, Caucasian participants exhibited greater understanding of the words and phrases than did minority participants. However, with instruction and experience (i.e., the instructed group) minority children are no more and no less disadvantaged than their Caucasian counterparts.

Judges, attorneys, and children all believe that children know more than they actually do about court proceedings and the rights they are waiving during the tendering of a plea. Although the study indicates that experience and instruction improve performance, the instructed group provided only 5 correct definitions out of a possible 36. This dismal lack of comprehension should be a wake-up call for attorneys, judges, and other court personnel who interact with court-involved children. They cannot rely on the child's affirmative response to the question "Do you understand?" when discussing rights the child is waiving or the disposition he or she is accepting. Court-involved children routinely misinterpret the information the adults are trying to impart. Practices and procedures must be modified to ensure that children accurately understand court proceedings and the ramifications of their decisions when tendering pleas.

IMPLICATIONS FOR PRACTICE

Obviously, a defense attorney's hurried explanation delivered just prior to a court appearance in the high-stress environment of the court corridor is not sufficient to ensure that the child fully understands the consequences of his or her legal decisions. In addition, a judge eliciting rote responses to questions that children are not likely to understand elevates form over substance and makes a hollow ritual out of the process of establishing a knowing, intelligent, and voluntary waiver of constitutional and statutory rights.

The need to fulfill statutory and constitutional requirements makes it incumbent on attorneys and judges to adapt their behavior and explanations to the abilities of the children with whom they interact. Attorneys must acknowledge their role as educators and modify the language they use when speaking with children. Their vocabulary should not exceed

an 8th-grade difficulty level. Concepts should be explained more than once and in a variety of ways to ensure comprehension. In addition, attorneys should inquire about, and understand, children's educational strengths and weaknesses. Many court-involved children suffer from learning disabilities. It is important to know whether a particular child has a reading disability, a receptive language handicap, borderline intelligence, or other deficits that may affect his or her ability to absorb and retain information. That knowledge will assist the attorney when determining the most effective means of communicating with that child. For example, a child with a reading disability may need information delivered orally, whereas a child with a receptive language disability may need to see the information in writing before he or she can process and retain it. If English is not the child's primary language, or not the language spoken at home, information should be communicated in the other language. Attorneys, like judges, need to probe the child's understanding rather than accept the affirmative nod or one-word response to the "Do you understand?" inquiry. They should ask the child to explain, in his or her own words, the concepts they are trying to communicate. This will give the attorney an opportunity to identify and clarify points of confusion.

Courts also have a responsibility to assist in the instruction of court-involved children. Throughout the country, trial courts use videos to educate potential jurors about court proceedings. Similarly, the Edmund D. Edelman Children's Court in the Superior Court of Los Angeles County makes videos available to familiarize children, ranging in age from preschool to high school, with child welfare proceedings. Such practices could be easily replicated in courts hearing delinquency cases. Children and their families spend hours waiting in the halls of juvenile courts for their cases to be called. Videos, available in a variety of languages, could provide information that would augment and reinforce explanations provided by the child's attorney.

Ultimately, however, it is the judge who must affirm for the record that the child has made a knowing, intelligent, and voluntary waiver of his or her constitutional rights with knowledge of the charge and the consequences of the plea. Regardless of the attorney's affirmation or the child's signature on a court form, it is the judge's responsibility to ensure that a child understands the decisions he has made and waives his rights intelligently and voluntarily.

In particular, judges should adapt the language they use during the plea colloquy to the abilities of the child. The modified child-friendly colloquy in the appendix to this article recognizes that many court-involved children suffer from academic failure or learning disabilities. Their ability to retrieve information when confronted with open-ended questions is often compromised. Therefore, the proposed colloquy consists of many questions requiring only brief or one-word responses. However, other questions do require the child to explain key concepts in his or her own words. For instances when the child is unable to do so, the proposed colloquy offers sample explanations using vocabulary, whenever possible, in the 4th- to 8th-grade difficulty range. The tone is informal, and the sentence structure communicates one idea at a time. Although a child-friendly colloquy may be more time consuming, it should enhance the child's understanding of the proceedings and allow judges to certify, with confidence, that the child's plea is intelligently and voluntarily made.

CONCLUSION

With courts and legislators increasingly emphasizing accountability and punishment in the juvenile justice system, the stakes for children have never been higher. If the system is going to hold children accountable for their waivers of rights and pleas, judges and attorneys must modify the language used in court proceedings to more accurately reflect the cognitive abilities and language skills of court-involved children. The results of this study indicate that colloquies and waiver forms routinely used in Massachusetts' juvenile court proceedings are replete with words and phrases that court-involved children do not understand. Even educated

and experienced children failed to correctly define 86 percent of the commonly used legal terminology. The data also indicate that even when children think they know the meaning of a word, they often mistake it for a similar-sounding word, apply a nonlegal definition, or rely on some portion of the word to trigger associations to a possible, but often incorrect, meaning. The results of this study raise serious concerns about the validity of children's pleas. It is our hope that it will prompt judges and attorneys to modify practices to ensure the fundamental fairness of the juvenile court plea proceeding.

NOTES

1. Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children, ch. 23, 1899 Ill. Laws 130 (1899). *See also* John C. Watkins, The Juvenile Justice Century: A Sociolegal Commentary on American Juvenile Courts 45 (Carolina Acad. Press 1998).

2. Watkins, *supra* note 1.

3. *In re* Gault, 387 U.S. 1, 26 (1967).

4. *Id*. at 15–16.

5. *Id*. at 26.

6. *Id*. at 49–50.

7. *Id*.

8. *In re* Winship, 397 U.S. 358, 364 (1970).

9. McKeiver v. Pennsylvania, 403 U.S. 528, 545 (1971).

10. *Gault,* 387 U.S. at 49–50.

11. For a discussion on this subject, *see* Helen Cavanaugh Stauts, Parens Patriae: *The Federal Government's Growing Role of Parent to the Needy,* 2 J. Center for Fam. Child. & Cts., 139–52 (2000).

12. *Gault,* 387 U.S. at 26.

13. *See* Mass. Gen. Laws ch. 119, §§ 55A, 56; Mass. R.Crim.P. 1 ("These rules govern the procedure in all criminal proceedings . . . in all delinquency proceedings . . . .").

14. Mass. Gen. Laws ch. 119, § 52.

15. Massachusetts Court System, Juvenile Court Department, Fiscal Year 2001 Statistics, *available at* www.state.ma.us/courts/courtsandjudges/courts/juvenilecourt/2003stats.html.

16. *Id*.

17. *See* Boykin v. Alabama, 395 U.S. 238, 243 (1969); Commonwealth v. Foster, 330 N.E.2d 100, 108 (Mass. 1975).

18. *See* Ciummei v. Commonwealth, 392 N.E.2d 1186, 1189 (Mass. 1979).

19. *See Foster,* 330 N.E.2d at 160.

20. *See* Commonwealth v. Andrews, 728 N.E.2d 327, 330 (Mass. 2000) (plea was invalid owing to lack of discussion or acknowledgment of the elements of the crime charged); *Foster,* 330 N.E.2d at 160 (conviction invalid where record showed no inquiry on questions of voluntariness and understanding); Commonwealth v. Fernandes, 459 N.E.2d 787, 791–92 (Mass. 1984) (conviction reversed); Commonwealth v. DeCologero, 726 N.E.2d 444, 448 (Mass. App. Ct. 2000) (finding set aside because colloquy was insufficient to establish that plea was intelligently made); Commonwealth v. Correa, 686 N.E.2d 213, 217 (Mass. App. Ct. 1997) (colloquy was deficient because of judge's failure to advise defendant on the nature, the elements, or the penalties of the charge). *See also* In re J.M., 769 A.2d 656, 659 (Vt. 2000) (failure of juvenile court to conduct a plea colloquy required a reversal of the finding of delinquency).

21. *Correa,* 686 N.E.2d at 216.

22. *Id.*

23. *Id.*

24. Commonwealth v. Duest, 572 N.E.2d 572, 576 (Mass. App. Ct. 1991).

25. *Correa,* 686 N.E.2d at 216.

26. *Id.*

27. *See Fernandes,* 459 N.E.2d 787 at 790; Commonwealth v. Quinones, 608 N.E.2d 724, 732 (Mass. 1993).

28. Massachusetts' juvenile courts hear child welfare, Children in Need of Services (CHINS), and delinquency matters. Delinquency cases are usually scheduled on one or two specific days each week.

29. *See* Commonwealth v. Colon, 789 N.E.2d 566 (Mass. 2003).

30. *See* Commonwealth v. Grant, 689 N.E.2d 1336, 1339 (Mass. 1998).

NOTES

31. Commonwealth v. Rodriguez, 755 N.E.2d 753, 757 (Mass. App. Ct. 2001).

32. Edgar Dale & Joseph O'Rourke, The Living Word Vocabulary: A 44,000 Word Vocabulary Inventory (World Book—Childcraft Int'l 1981).

33. Three interviewers were used in this pilot study. All three were law students; one was a former elementary school teacher. All three had experience working with children and were trained in the administration of the questionnaire by Barbara Kaban.

34. Although this group was smaller than the uninstructed group, the sample size was sufficient to allow for statistical analyses of differences across and between the two groups.

35. We did not have easy access to a facility for girls, and so this portion of the study was limited to boys.

36. For a discussion of this subject, *see* Judith A. Cox & James Bell, *Addressing Disproportionate Representation of Youth of Color in the Juvenile Justice System,* 3 J. Center for Fam. Child. & Cts. 31–43 (2001).

37. Throughout the study we used Tukey's Tests to test for differences between Caucasians, African Americans, Hispanics, and Asians. This test is performed in conjunction with a one-way analysis of variance, post hoc, to determine where the differences, if any, lie. It operates with three or more samples and their mean, testing the mean of each population against the mean of every other population.

38. Robin Dahlberg, Am. Civil Liberties Union, Disproportionate Minority Confinement in Massachusetts: Failures in Assessing and Addressing the Overrepresentation of Minorities in the Massachusetts Juvenile Justice System (2003).

APPENDIX

"CHILD-FRIENDLY" COLLOQUY

My name is Judge *[name]*. What's your name?

You are in court because you have been charged with committing a crime. Your lawyer tells me that you want to work out a solution to your case without going to trial. That solution is called a "plea." Before I accept your plea, I must ask you a few questions to make sure you understand what you are doing today. If you don't understand my questions or anything I say, please tell me. If I don't understand anything you say, I will tell you.

How old are you?

Where were you born?

Do you go to school?

What school do you go to?

What grade are you in?

[Or:] What was the last grade you were in when you went to school?

Who is here with you today?

Was *[parent or guardian]* present when you talked to your lawyer today?

Did you have enough time to talk to your *[parent or guardian]* about the decisions you are making today?

Did you have enough time to talk to your lawyer about the decisions you are making today?

Did you take any medicine today? Did you take any medicine yesterday?

[If yes:] What medicine did you take?

Did you use any drugs yesterday or today?

Did you drink alcohol yesterday or today?

[If the answer is yes to any of the three previous questions:]

Does the medicine/drug/alcohol make it hard for you to understand what I am saying to you today?

Please tell me what you have been charged with doing. *[If the child does not answer correctly, the judge should explain the charges to the child. The judge should then explain the elements of the charge that the prosecutor would have to prove for the child to be adjudicated delinquent.]*

APPENDIX

When you offer a plea, you are admitting that you violated the law. When you admit to violating the law, there is a range of consequences that I can impose, from placing you on probation to committing you to the Department of Youth Services.

Do you know what happens when someone is placed on probation?

[If the child answers yes, ask:] Tell me what you think happens when someone is placed on probation.

[If the child does not answer correctly, the judge should provide the following explanation:]

When you are placed on probation, you will have a probation officer who will check up on you. You will also have a set of conditions that you must obey. For example, you may have a curfew—that is a time each night when you must be at home. Another condition may be that you have to go to school every day and not get in trouble when you are in school. The probation officer may come to your house or your school to check up on you. If you do not do what you have agreed to do when on probation, you can be brought into court on a probation violation and you may face more serious consequences.

One of the more serious consequences a child can face is commitment to the Department of Youth Services. Tell me what you think happens when someone is committed to the Department of Youth Services.

[If the child's explanation is inaccurate, provide the following explanation:]

When you are committed to the Department of Youth Services, you are taken away from your family and placed in the custody of the Department of Youth Services. The Department of Youth Services is commonly called DYS. Have you heard of DYS?

When you are committed to DYS, you are committed to age 18. Once you are committed to DYS, DYS decides which program will best meet your needs. DYS can place you in a program where you can't go outside unless you are supervised by staff members. Or DYS can place you in a less secure program where you can come and go more freely. DYS decides where you will go and how long you will stay in the program. You will have to live at the program DYS selects, and you may have to stay there for months or even for years. The decision about how long you will stay in the program depends on your behavior once you are there.

Now please tell me in your own words what happens when someone is committed to DYS.

When you offer a plea as you are doing today, you give up certain rights. You give up the right to a trial. Please tell me what you know about a trial. *[Whatever response the child provides probably will not be a full or accurate description of a trial. The judge should then provide the following information.]*

APPENDIX

You can have a trial with only a judge, like myself. Or you can have a trial with a jury. A jury is made up of 6 or 12 grownups who don't know you or anyone involved in the case. You would help your lawyer choose the people on the jury. It is the jury's job to listen to the evidence and decide whether you are guilty or not guilty. You don't have to say anything during the trial if you don't want to. After the jury hears all the evidence, they decide if you are guilty or not guilty. The jury members all have to agree on their decision.

If you decide to have a trial with only a judge, then only one person, the judge, listens to the evidence and decides whether or not you are guilty.

In a trial, the judge or the jury must assume you are innocent. It is the prosecutor's job to prove that you are guilty. The prosecutor must prove you are guilty beyond a reasonable doubt. That means that the judge or the jury, after listening to all the evidence, must be certain you did *[recite elements of the crime]* before they can find you guilty. If they are not certain, they must assume that you are innocent.

When you decide to give up your right to a trial, it means you are giving up several important rights. For example, it means that you won't hear what the witnesses against you would say. It means that your lawyer won't get a chance to question those witnesses. And it also means that you won't get a chance to call your own witnesses to tell your side of what happened. Do you understand that you are giving up these rights?

Do you have any questions for me about a trial?

Do you want to give up your right to a trial today?

Has anyone promised you anything to make you give up your right to a trial?

Has anyone forced you to give up your right to a trial?

Has anyone threatened you to make you give up your right to a trial?

[Judge affirms for the record that the child has made a knowing, intelligent, and voluntary waiver of the right to a trial and signs the waiver portion of the tender-of-plea form.]

Your lawyer wrote down what you are willing to agree to do in order to end your case today. The prosecutor wrote down what *[he/she]* thinks you should do. If I do not agree with what your lawyer has written down, you can change your mind and still have the right to go to trial. Do you understand that?

[To the prosecutor:] Please state the facts of the case.

[To the child:] Did you understand what the prosecutor said?

Is that basically what happened?

APPENDIX

After hearing the facts of the case and assuring myself that *[child's name]* understands what *[he/she]* is doing today, I am going to:

(a) accept the terms and conditions suggested by the child [*or:* agreed to by the child and the prosecutor]. Those terms and conditions include *[recite terms and conditions]*.

[Child's name], please tell me what you have agreed to do today. *[If child cannot recite all the conditions, repeat any condition that is omitted.]*

If you don't do everything you agreed to do today, you can be brought back into court and committed to the Department of Youth Services. Do you have any questions about what you have agreed to do?

(b) I do not agree with what your lawyer has suggested you are willing to do to end your case today. I would order the following terms and conditions *[recite terms and conditions]*.

[Child's name], you don't have to accept the terms and conditions I would order. You can change your mind and go to trial. Before you make up your mind, I am going to give you a few minutes to talk to your lawyer.

Will you accept what I would order?

[Child's name], please tell me what you have agreed to do today. *[If child cannot recite all the conditions, repeat any condition that is omitted.]*

If you don't do everything you agreed to do today, you can be brought back into court and committed to the Department of Youth Services. Do you have any questions about what you have agreed to do?

By agreeing to this plea you are admitting to this court that you did what you were charged with doing. You told me you were not born in the United States [*or:* You told me that you were born in the United States, so this probably does not apply to you.] It is my job to tell you that if you were not born in the United States or are not yet a citizen of the United States, admitting to these facts may mean that you have to leave this country. Or if you leave the United States to visit another country, you may not be able to come back into this country. Or it could mean that you may not be able to become a citizen when you get older. Do you have any questions for me about what I have just told you?

[Name of attorney], are there any other questions that I should ask *[name of child]* to ensure that *[he/she]* fully understands this proceeding?

[Name of child], do you want to ask me anything about what I have said or what you have agreed to do?